

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3281

IN THE MATTER OF:

Served January 25, 1989

Investigation of Need for Charter )  
Coach Service Pursuant to the )  
Compact, Title II, Article XII, )  
Section 4(d)(3) )

Case No. MP-88-37

Application of LEATHERWOOD MOTOR )  
COACH CORPORATION Trading as EAST )  
COAST PARLOR CAR TOURS for )  
Temporary Authority )

Case No. AP-88-39

Application of GREYHOUND LINES, )  
INC., for Temporary Authority )

Case No. AP-88-41

By Order No. 3263, served December 9, 1988, certain temporary authority was granted conditionally, contingent upon compliance with certain Commission regulations, to Bill Rohrbaugh's Charter Service, Inc.; Lee Coaches, Inc.; Virginia Coach Company, Inc.; Potomac Valley Bus Lines, Inc.; and All About Town, Inc. The grants of temporary authority were made based on (1) uncontested evidence of immediate and urgent need provided by The Capital Informer, Inc., Washington, DC; The Convention Store, Washington, DC; American Student Travel, Inc., Houston, TX; Washington, Inc., Washington, DC; the District of Columbia Chamber of Commerce Convention and Tourism Committee, Washington, DC; and USA Hosts, Washington, DC, and (2) evidence of fitness provided by the carriers granted temporary authority. By Order No. 3263 the Commission declined to grant temporary authority to Sparten Tours, Inc. (Sparten), because it had submitted inadequate documentation regarding its USDOT safety rating, thus providing inadequate evidence upon which to make a preliminary finding of fitness. Order No. 3263, by its terms, provided that any request for reconsideration filed by Sparten and based upon USDOT safety rating documentation approved for filing by the Commission's Executive Director would be considered grounds for reopening Case No. MP-88-37 as it applied to Sparten. In Order No. 3263 the Commission further declined to grant temporary authority to Videovue International, Ltd., d/b/a Videovue Tours (Videovue) based on its USDOT safety rating of "unsatisfactory".

On December 16, 1988, Sparten filed a copy of its current USDOT safety rating. The rating is "conditional." On December 29, 1988, Sparten filed a copy of its most recent safety review. The review, performed August 26, 1987, indicated certain deficiencies in recordkeeping, record organization, and monitoring of accuracy of records. The records involved included those related to the nature and timeliness of vehicle maintenance and safety inspections as well as

drivers' duty status. On January 9, 1989, Sparten's vice-president submitted an affidavit outlining the steps that Sparten has taken to correct the problems highlighted by USDOT and responsible for its safety rating being "conditional" as opposed to "satisfactory". These actions include implementation of a system for completing and filing records relating to reportable accidents, driver qualifications, maintenance records, and drivers' logs. On January 9, 1989, Sparten also submitted evidence of an inspection of its vehicles performed by the Maryland Public Service Commission (PSC) that same day. The inspection was performed according to USDOT criteria, and four buses listed on Sparten's equipment list were given PSC numbers. Other vehicles on Sparten's equipment list which were inspected that same day were ordered out of service due to mechanical deficiencies. Pursuant to Order No. 3263 Sparten's petition for reconsideration is hereby deemed a petition to reopen the request to reopen is granted, and the above-described items are received into Case No. MP-88-37 as evidence. After reviewing the evidence produced by Sparten, we are unable to find Sparten fit at this time. For this reason, Sparten will not be granted temporary authority.

On January 3, 1989, Videovue petitioned the Commission for reconsideration of Order No. 3263. As support for its petition Videovue relies on a USDOT safety rating of "satisfactory" issued December 19, 1988. The satisfactory rating was the result of a reaudit conducted by USDOT on December 14, 1988.

Title II, Article XII, Section 16 of the Compact provides

[a]ny person affected by any final order or decision of the Commission may, within thirty days after the publication thereof, file with the Commission an application in writing requesting a reconsideration of the matters involved, and stating specifically the errors claimed as grounds for such reconsideration.  
(Emphasis added.)

In this instance it is appropriate to deny reconsideration. Videovue was denied temporary authority due to an unsatisfactory safety rating by USDOT. The evidence submitted by Videovue with its Petition for Reconsideration indicates no factual error in that, at the time Order No. 3263 was served, Videovue's USDOT safety rating was, in fact, unsatisfactory. No legal error is claimed regarding denial of temporary authority to a carrier holding a safety rating of unsatisfactory.

However, in this instance, it is equally appropriate for the Commission, on its own initiative, to reopen Case No. MP-88-37 as it applies to Videovue for receipt into evidence of the materials filed by Videovue with its Petition for Reconsideration. This reopening is accomplished pursuant to Commission Rule No. 27-02 because conditions of fact have so changed as to require it. Videovue now has a USDOT safety rating of satisfactory. Moreover, it appears that Videovue's president may have been unaware that Videovue's rating, which had been

"satisfactory" as recently as May 18, 1987, had changed. In light of the speed with which a reaudit was requested of USDOT and received, as well as the results of that audit, it can be inferred that, under other circumstances, Videovue could have been able to submit a satisfactory rating during the pendency of Case No. MP-88-37.

After reviewing the evidence produced by Videovue as part of its Petition for Reconsideration in combination with the evidence of record in this case, we find that Videovue has substantially complied with the requirements of Order No. 3239 and is fit operationally, financially, and as to compliance to meet the transportation needs described in Order No. 3263.

**THEREFORE, IT IS ORDERED:**

1. That Videovue Tours International, Ltd., d/b/a Videovue Tours is hereby conditionally granted 180 days temporary authority, contingent upon compliance with the requirements of this order, to transport passengers in charter operations between points in the Metropolitan District, except transportation solely within the Commonwealth of Virginia, for the accounts of The Capital Informer, Inc.; Washington, Inc.; The Convention Store; American Student Travel, Inc.; the District of Columbia Chamber of Commerce Convention and Tourism Committee, and USA Hosts.

2. That Videovue Tours International, Ltd., d/b/a Videovue Tours is hereby directed, within 30 days of the issuance of this order, to file with the Commission two copies of its WMATC Temporary Authority Tariff No. 1 and an affidavit certifying compliance with Commission Regulation No. 67 governing identification of vehicles.

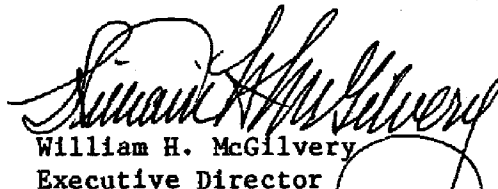
3. That unless Videovue Tours International, Ltd., d/b/a Videovue Tours complies with the requirements of the preceding paragraphs within 30 days of the service date of this order, the conditional grant of temporary authority contained herein shall be void, and such application as may be deemed to have been filed shall stand denied effective upon the expiration of said compliance time.

4. That the conditional grant of temporary authority made herein shall continue in effect through Friday, June 9, 1989, contingent upon compliance with the requirements of this order.

5. That the Executive Director shall notify Videovue Tours International, Ltd., d/b/a Videovue Tours, in writing, upon the timely compliance with the requirements of this order, that it may commence operations pursuant to temporary authority.

6. That the Petition to Reopen of Sparten Tours, Inc., is hereby granted.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:

  
William H. McGilvery  
Executive Director